IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5280 of 2007()

CRIME NO.455/07 OF CHERUTHURUTHY POLICE STATION

PETITIONER : ACCUSED NOS. 1,2 & 4:

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1. THEYYUNNI, S/O.KRISHNAN,
ANDURKUNNU, NEDUNGOTTUR, SHORNUR,
OTTAPALAM TALUK.

2. MUKESH, S/O.THEYYUNNI, ANDURKUNNU,
NEDUNGOTTUR, SHORNUR, OTTAPALAM TALUK.

3. MANOJ, S/O.THEYYUNNI, ANDURKUNNU,
NEDUNGOTTUR, SHORNUR, OTTAPALAM TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: COMPLAINANT/STATE:

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5280 OF 2007

Dated this the 25th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1, 2 and 4. Altogether, there are four accused persons. They face allegations, inter alia, under Secs.308 and 324 read with Sec.34 of the IPC. Investigation in that crime is in progress. The petitioners apprehend imminent arrest.

2. I have heard the learned counsel for the petitioners and the learned Public Prosecutor. Crime No.301/07 of the Shornur Police Station was registered against the 3rd accused in this crime on 3/8/07. It was alleged in that crime that at about 7 p.m. on 3/8/07 the 3rd accused was found in possession of ganja. He was attempting to transport the same in his personal possession. He was intercepted by some members of the public who suspected the conduct of the 3rd accused. The

de facto complainant and and injured in the present crime are the persons who so intercepted the 3rd accused. The 3rd accused escaped from their custody. The police reached the scene on receipt of information. Crime No.301/07 was accordingly registered against the 3rd accused. Investigation into that crime is in progress.

3. Crime No.303/07 was registered by the Shornur police on the basis of a complaint lodged by the said Raghu – the 3rd accused herein. In the First Information Statement lodged by the 3rd accused, he does not make any reference to the earlier incident in Crime No.301/07; but he alleged that at 6.30 p.m. he was assaulted by the de facto complainants herein and he had suffered injuries. Investigation in that crime has already been completed. Police have chosen to refer the crime as mistake of fact. It is the finding of the police that when the 3rd accused ran away after the incident in Crime No.301/07, he must have fallen and suffered injuries.

4. Be that as it may, we are now dealing with the present crime i.e., Crime No.455/07 of the Cheruthuruthy Police Station. The de facto complainants, who had caught hold of the 3rd accused in Crime No.301/07, gathered information that the 3rd accused who escaped from them was available within the

jurisdiction of the Shornur Police Station and he was threatening that he will attack the de facto complainant and injured. On receipt of that information, the de facto complainants allegedly proceeded to the place where the 3rd accused was allegedly available in an attempt to apprehend him and report to the police. They were proceedings in an autorikshaw. While they were proceeding in the autorikshaw, the accused persons – 4 in number, allegedly came in an autorikshaw armed with dangerous weapons and allegedly attacked the de facto complainants. Three persons have suffered injuries. Swords were allegedly used for the commission of the offence. The 3rd accused has already been arrested. The petitioners apprehend imminent arrest.

5. The learned counsel for the petitioners submits that the petitioners are absolutely innocent of the allegations levelled against them. The police are acting hand in glove with the de facto complainants. The de facto complainants are ganja traders. They have taken law into their own hands. Even going by their version, they were the aggressors and the petitioners were the victims of the aggression. False and fanciful allegations are now being raised against the petitioners. The petitioners do not deserve to endure the undeserved trauma of

arrest and detention. They may be enlarged on bail.

6. The learned counsel for the petitioner advances two specific contentions. First of all, he contends that the inclusion of the allegation under Sec.308 of the IPC is not justified. He further raises a contention that the 3rd accused had suffered serious injury i.e., fracture of nasal bone as alleged by him in Crime No.303/07. Going by the case of the 3rd accused or by that of the prosecution, the injury was suffered by him between 6.30 and 7 p.m. on 3/8/07. It was therefore very unlikely that the petitioners along with the 3rd accused would have proceeded in an autorikshaw to attack the de facto complainants as alleged by them at 7.30 p.m. in this crime. The learned counsel for the petitioners, in these circumstances, prays that anticipatory bail may be granted to the petitioners.

7. The learned Public Prosecutor opposes the application. The victims – three in number, have suffered injuries. One of them has suffered a fairly serious injury on the crown. The inclusion of Sec.308 of the IPC is perfectly justified going by the nature of the injury, the nature of the allegations and the nature of the weapon allegedly used for the commission of the offence. It is too early and premature to embark on a detailed discussion as to whether the offence under Sec.308 of the IPC is made out

or not. Prima facie , all the indications suggest that such an offence has been committed and it is not necessary or possible to enter any positive finding contra at this stage.

8. The learned Public Prosecutor further submits that the alleged injury suffered by the 3rd accused – a nasal bone fracture, need not necessarily to knock the bottom out of the version of the de facto complainants in this case which is supported eminently by the circumstances, nature of injuries, prompt allegations made to the Doctor etc., in this crime. In these circumstances, the fact that the 3rd accused is shown to have suffered a nasal bone fracture cannot also be reckoned as sufficient to justify the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

9. I have considered all the relevant inputs. At this early stage of the investigation, I shall scrupulously avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. I take note of the totality of the circumstances and the sequence of events. I take note of the nature of the injuries suffered by the three victims. I take note of the nature of the allegations about the manner in which the injury was caused and the circumstances leading to the

incident alleged in this case. Having considered all the relevant circumstances, I must say that I do not find any features in this case which would justify the invocation of the extraordinary equitable discretion vested in this Court under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioners must resort to the ordinary course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal course.

10. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously**.**

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge